

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MATTHEW WESTALL,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 56136</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 20, 2012, James R. Meurer and Louesa Maricle presiding. Petitioner appeared pro se. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2010 actual value of the subject property.

Subject property is described as follows:

**A Tract in the S½ NE¼ 29-9-65 AKA Most of Tract 2 Antelope Ridge,
Douglas County, Colorado
Douglas County Account No. R0465427**

The subject property is vacant land that is approximately 29.932 acres in size. It is generally flat to gently sloping non-forested land with native grasses. It is located east of I-25, south and east of Castle Rock, next to ranch land and a small enclave of houses on 35-acre tracts. The subject parcel was created when it was split from a larger parcel by a Public Trustee's deed. As a result of the split, the subject property no longer has legal access. Both parties agree that Petitioner will have to pursue a legal remedy to obtain an Easement of Necessity to gain access, obtain a voluntary access easement from an owner of an adjacent parcel, or purchase land to gain legal access to the property. The parties agree there is no dispute regarding the classification of the subject property as vacant land for tax year 2010.

Petitioner is requesting an actual value of \$80,730.00 for the subject property for tax year 2010. Respondent assigned a value of \$137,551.00 for the subject property for tax year 2010.

Petitioner contends that the sales used by Respondent have superior locations, better access to utilities and roads, and that Respondent has not adequately reflected the lack of legal access in the valuation of the property. Petitioner testified he was unaware the property did not have legal access when he purchased the property for \$76,100.00 at public auction in 2009. Petitioner testified that he estimates the cost to go to court to obtain an Easement of Necessity and purchase an easement is approximately \$100,000.00. He was unable to obtain a written bid from an attorney for what the legal action may cost, so he based his estimate on his conversations with multiple lawyers plus his own estimate of the cost to buy an easement. Petitioner presented seven sales ranging in size from 34.6 to 40 acres and in price from \$2,303.00 to \$6,714.00 per acre. One of the sales is improved with a house. Petitioner gave the most weight to Sales 1 and 2 that he described as being "land locked" because they are not accessible 50% of the year. Those two sales indicate values of \$2,500.00 to \$2,700.00 per acre. Petitioner contends that both of those sales should be adjusted downward for their larger sizes and superior access. Petitioner concluded to a value for the subject property of \$80,730.00 based primarily on Sales 1 and 2 and his estimate of the cost to cure the subject's legal access defect.

Respondent used the market approach to value the subject property. Respondent's witness, Mr. John E. Whitley, a Licensed Appraiser employed by the Douglas County Assessor's Office, testified that he was unable to find any sales of vacant parcels without legal access within the extended five year base period. The witness did not consider Petitioner's purchase of the subject because it was a foreclosure sale and occurred outside the base period. The witness presented five sales of vacant land ranging in size from 28.51 to 40.00 acres and in price from \$6,600.00 to \$10,997.00 per acre. The witness testified that all of the sales are located east of I-25 and are within seven miles of the subject. Like the subject, all are flat to gently sloping and have native grasses. Mr. Whitley testified that all the sales are superior to the subject because they have legal access. The witness concluded to an initial value for the subject of \$6,600.00 per acre, at the low end of the range indicated by the comparable sales. The resulting total initial value was \$197,551.00. The witness testified that he deducted \$60,000.00 from the initial value to reflect the estimated cost to cure the legal access defect for the subject which resulted in a value for the property of \$137,551.00. The \$60,000.00 cost to cure estimate was based on a cost range of \$50,000.00 to \$60,000.00 presented by Petitioner at the time of the original valuation protest in 2010; and the witness testified that he used the high end of that range to give the benefit to Petitioner. Respondent assigned an actual value of \$137,551.00 to the subject property for tax year 2010.

Respondent presented sufficient probative evidence and testimony to support the value assigned to the subject property for tax year 2010.

The Board considered testimony by both parties and concludes that because of location, topography and other physical characteristics, or degree of development, the sales presented by Petitioner are not more comparable than those used by Respondent. The Board agrees with both parties that the most significant factor in the valuation of the subject property is the cost to cure the legal access defect and concludes that an estimate of a reasonable cost to cure is inherently speculative. In the absence of market sales of properties without legal access, the Board concludes that Respondent's methodology of adjusting the initial value of the property for the cost to cure the defect is reasonable. Petitioner did not provide support for his higher cost estimate presented at the

BAA hearing. The Board concludes that the actual cost to cure the access defect could be higher or lower than the adjustment figure used by Respondent, but without evidence to the contrary, Respondent made a reasonable adjustment based on Petitioner's own estimate in 2010.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

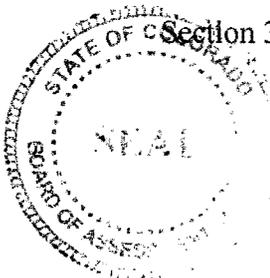
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 13th day of February 2012.



I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Crichton

BOARD OF ASSESSMENT APPEALS

James R. Meurer

Louesa Maricle